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HANNAH L. BLUMENSTIEL

U.S. Bankruptcy Judge

Counsel to the Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION,

Debtor.

Case No. 23-30662-HLB

Chapter 11

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this Contested Matter (the “Action”)¹ are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this Action may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under applicable legal principles.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

¹ Contested Matter refers to the confirmation of the amended *Plan of Reorganization for Small Business Under Chapter 11* [Docket No. 60] (the “Plan”) and the related *Amended Order Setting Schedule in Connection With Plan Confirmation Process and Related Deadlines* [Docket No. 116].

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 ICTSI Litigation: that certain lawsuit captioned *ICTSI Oregon, Inc. v. Intl. Longshore and Warehouse Union*, Case No. 3:12-cv-1058-SI (D. Or. Jun. 13, 2012).

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not a Party.

2.11 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

1 2.12 Party: The above-captioned debtor, ICTSI (Oregon), Inc., and any other persons or
2 entities who become bound by this Order by signifying their assent through execution of Exhibit A
3 attached hereto (the “Acknowledgement”), and each of the foregoing’s officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
6 in this Action.

7 2.14 Professional Vendors: persons or entities that provide litigation support services (*e.g.*,
8 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
9 or retrieving data in any form or medium) and their employees and subcontractors.

10 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 **3. SCOPE**

15 The protections conferred by this Order cover not only Protected Material (as defined above),
16 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
17 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
18 presentations by Parties or their Counsel that might reveal Protected Material. However, the
19 protections conferred by this Order do not cover the following information: (a) any information that
20 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
21 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of
22 this Order, including becoming part of the public record through trial or otherwise; and (b) any
23 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
24 after the disclosure from a source who obtained the information lawfully and under no obligation of
25 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
26 separate agreement or order.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
5 defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion
6 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time
7 limits for filing any motions or applications for extension of time pursuant to applicable law.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
10 Non-Party that designates information or items for protection under this Order must take care to limit
11 any such designation to specific material that qualifies under the appropriate standards. To the extent
12 it is practical to do so, the Designating Party must designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify – so that other portions of the
14 material, documents, items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
17 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
18 encumber the case development process or to impose unnecessary expenses and burdens on other
19 parties) expose the Designating Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it designated for
21 protection do not qualify for protection at all or do not qualify for the level of protection initially
22 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
23 mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see*,
25 *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
26 Discovery Material that qualifies for protection under this Order must be clearly so designated before
27 the material is disclosed or produced.
28

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
4 affix the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” to each page that contains protected material. If only a portion or portions of the material on
6 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of
8 protection being asserted.

9 A Party or Non-Party that makes original documents or materials available for inspection need
10 not designate them for protection until after the inspecting Party has indicated which material it would
11 like copied and produced. During the inspection and before the designation, all of the material made
12 available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
14 Producing Party must determine which documents, or portions thereof, qualify for protection under
15 this Order. Then, before producing the specified documents, the Producing Party must affix the
16 appropriate legend (“CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” to each page that contains Protected Material. If only a portion or portions of the material on
18 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
19 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of
20 protection being asserted.

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
22 the Designating Party identify on the record, before the close of the deposition, hearing, or other
23 proceeding, all protected testimony and specify the level of protection being asserted. When it is
24 impractical to identify separately each portion of testimony that is entitled to protection and it appears
25 that substantial portions of the testimony may qualify for protection, the Designating Party may invoke
26 on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to
27 14 calendar days to identify the specific portions of the testimony as to which protection is sought and
28 to specify the level of protection being asserted. Only those portions of the testimony that are

1 appropriately designated for protection within the 14 calendar days shall be covered by the provisions
2 of this Order. Alternatively, a Designating Party may specify, at the deposition or up to 14 calendar
3 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
6 other proceeding to include Protected Material so that the other parties can ensure that only authorized
7 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
8 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way
9 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.”

11 Transcripts containing Protected Material shall have an obvious legend on the title page that
12 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
13 (including line numbers as appropriate) that have been designated as Protected Material and the level
14 of protection being asserted by the Designating Party. The Designating Party shall inform the court
15 reporter of these requirements. Any transcript that is prepared before the expiration of a 14 calendar
16 day period for designation shall be treated during that period as if it had been designated “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
18 expiration of that period, the transcript shall be treated only as actually designated.

19 (c) for information produced in some form other than documentary and for any
20 other tangible items, that the Producing Party affix in a prominent place on the exterior of the container
21 or containers in which the information or item is stored the legend “CONFIDENTIAL,” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
23 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
24 portion(s) and specify the level of protection being asserted.

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the Designating Party’s right
27 to secure protection under this Order for such material. Upon timely correction of a designation, the
28

Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5.4 Documents Designated as Confidential in the ICTSI Litigation.

(a) Any document produced by the Debtor or ICTSI and designated as “CONFIDENTIAL” under the Stipulated Protective Order entered in the ICTSI Litigation at Docket No. 346 (“Oregon Protective Order”) shall be deemed produced in this Action and designated as “CONFIDENTIAL” hereunder; *provided that* such document was created on or after September 30, 2016 (an “Oregon Produced Document”).

(b) If a Party wants to use a document that is otherwise an Oregon Produced Document, except for the fact that it is dated prior to September 30, 2016 (an “Old Oregon Produced Document”), for a motion, deposition, hearing, mediation, in preparation for any of the foregoing, or in response to a request by a Party who has executed Exhibit A, such Party shall request permission in writing (via email to applicable counsel) from the other Party. Such request shall be made at least 14 calendar days before the intended use of such Old Oregon Produced Document. The other Party shall have 7 calendar days to respond. In the event permission is not provided, the Parties agree to meet and confer in good faith regarding such use and prior to proceeding under Section D of this Court’s Practices & Procedures or the filing of a motion noticed pursuant to B.L.R. 9014-1(c)(1). For the avoidance of doubt, any dispute concerning the use of an Old Oregon Produced Document shall not delay or otherwise be cause to postpone the filing of the motion or holding the deposition or hearing.

(c) Notwithstanding the foregoing, the Parties reserve all rights to object to the use, admissibility, relevance, or the like on any grounds and for any basis with respect to an Oregon Produced Document or Old Oregon Produced Document. To the extent a document protected under the Oregon Protective Order is used in this Action in accordance with this Order, the Parties waive any right to claim a violation of the Oregon Protective Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,

1 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
2 confidentiality designation by electing not to mount a challenge promptly after the original designation
3 is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
5 by providing written notice of each designation it is challenging and describing the basis for each
6 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
7 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
8 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process
9 by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
10 within 3 calendar days of the date of service of notice. In conferring, the Challenging Party must
11 explain the basis for its belief that the confidentiality designation was not proper and must give the
12 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
13 and, if no change in designation is offered, to explain the basis for the chosen designation. A
14 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
15 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
16 meet and confer process in a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
18 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
19 Bankruptcy Local Rule 7007-1 (and in compliance with Civil Local Rule 79-5, if applicable) within
20 14 calendar days of the initial notice of challenge or within 7 calendar days of the parties agreeing that
21 the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion
22 must be accompanied by a competent declaration affirming that the movant has complied with the
23 meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party
24 to make such a motion including the required declaration within 14 calendar days (or 7 calendar days,
25 if applicable) shall automatically waive the confidentiality designation for each challenged
26 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
27 designation at any time if there is good cause for doing so, including a challenge to the designation of
28 a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be

1 accompanied by a competent declaration affirming that the movant has complied with the meet and
2 confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
4 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
5 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
6 Designating Party has waived the confidentiality designation by failing to file a motion to retain
7 confidentiality as described above, all parties shall continue to afford the material in question the level
8 of protection to which it is entitled under the Producing Party's designation until the court rules on the
9 challenge.

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
14 categories of persons and under the conditions described in this Order. When the litigation has been
15 terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a location and in a
18 secure manner that ensures that access is limited to the persons authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
20 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
21 information or item designated "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
24 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
25 Bound" that is attached hereto as Exhibit A;

26 (b) the officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
28 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
3 Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the Action to whom disclosure is
9 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
12 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
13 this Order;

14 (g) the author or recipient of a document containing the information or a custodian
15 or other person who otherwise possessed or knew the information; and

16 (h) any Party as defined in Section 2.12, *provided that* the Receiving Party copies
17 counsel to the Designating Party and Debtor (if not the Designating Party) on such disclosure.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating
20 Party, a Receiving Party may disclose any information or item designated “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
24 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
25 Bound” that is attached hereto as Exhibit A;

26 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
27 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
28 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

1 (c) the court and its personnel;

2 (d) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (e) the author or recipient of a document containing the information or a custodian
6 or other person who otherwise possessed or knew the information; and

7 (f) any Party as defined in Section 2.12 who is also an attorney, *provided that* the
8 Receiving Party copies counsel to the Designating Party and Debtor (if not the Designating Party) on
9 such disclosure.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
11 – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

12 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
13 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
14 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
15 paragraph 7.3(b) first must make a written request to the Designating Party that (1) identifies the
16 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that
17 the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
18 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current
19 resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom
20 the Expert has received compensation or funding for work in his or her areas of expertise or to whom
21 the expert has provided professional services, including in connection with a litigation, at any time
22 during the preceding five years,² and (6) identifies (by name and number of the case, filing date, and
23 location of court) any litigation in connection with which the Expert has offered expert testimony,
24 including through a declaration, report, or testimony at a deposition or trial, during the preceding five
25 years.

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27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
28 should provide whatever information the Expert believes can be disclosed without violating any confidentiality
agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
Party regarding any such engagement.

1 (b) A Party that makes a request and provides the information specified in the
2 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert
3 unless, within 3 calendar days of delivering the request, the Party receives a written objection from
4 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
7 within 7 calendar days of the written objection. If no agreement is reached, the Party seeking to make
8 the disclosure to the Expert may file a motion as provided in Bankruptcy Local Rule 7007-1 (and in
9 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any
10 such motion must describe the circumstances with specificity, set forth in detail the reasons why
11 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
12 entail, and suggest any additional means that could be used to reduce that risk. In addition, any such
13 motion must be accompanied by a competent declaration describing the parties' efforts to resolve the
14 matter by agreement (*i.e.*, the extent and the content of the meet and confer discussions) and setting
15 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

16 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
17 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
18 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

19 **8. PROTECTED MATERIAL SUBPOENAED**

20 **OR ORDERED PRODUCED IN OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this Action as "CONFIDENTIAL," or "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification shall include
25 a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue
27 in the other litigation that some or all of the material covered by the subpoena or order is subject to
28 this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.³ If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL
SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

³ The purpose of imposing these duties is to alert the interested parties to the existence of this Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 (c) If the Non-Party fails to object or seek a protective order from this court within
2 7 calendar days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
4 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court.⁴ Absent a court order to the contrary, the Non-Party shall bear the burden
7 and expense of seeking protection in this court of its Protected Material.

8 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
10 Material to any person or in any circumstance not authorized under this Order, the Receiving Party
11 must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
12 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
13 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
14 such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
15 hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED**
17 **OR OTHERWISE PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
19 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
20 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
21 modify whatever procedure may be established in an e-discovery order that provides for production
22 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
23 parties reach an agreement on the effect of disclosure of a communication or information covered by
24 the attorney-client privilege or work product protection, the parties may incorporate their agreement
25 in a stipulated protective order submitted to the court.

26
27
28 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non- Party
and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
3 its modification by the court in the future.

4 12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have
5 to object to disclosing or producing any information or item on any ground not addressed in this Order.
6 Similarly, no Party waives any right to object on any ground to use in evidence of any of the material
7 covered by this Order.

8 12.3 Filing Protected Material. Without written permission from the Designating Party or a
9 court order secured after appropriate notice to all interested persons, a Party may not file in the public
10 record in this Action any Protected Material. A Party that seeks to file under seal or redact any
11 Protected Material must comply with the court's *Procedures for Filing Redacted or Sealed*
12 *Confidential or Highly Sensitive Documents* (the "Procedures"). Protected Material may only be
13 redacted or filed under seal pursuant to a court order authorizing the redaction or sealing of the specific
14 Protected Material at issue. Pursuant to the Procedures, an order authorizing the sealing or redaction
15 will issue only upon a motion which establishes that the allegedly Protected Material is/are entitled to
16 protection under applicable law. The motion must be as narrowly tailored as possible, specify the
17 grounds on which the request is based and be supported by a competent declaration that attests to the
18 factual bases for the relief sought. The docketing instructions pertaining to sealed or redacted
19 documents can be found at www.canb.uscourts.gov/ecf/efiling-manual/sealed-events.

20 **13. FINAL DISPOSITION**

21 Within 60 calendar days after the final disposition of this Action, as defined in paragraph 4,
22 each Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected Material.
25 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
26 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
27 the 60 calendar day deadline that (1) identifies (by category, where appropriate) all the Protected
28 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any

1 copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the
2 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
3 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
4 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
5 and expert work product, even if such materials contain Protected Material. Any such archival copies
6 that contain or constitute Protected Material remain subject to this Order as set forth in Section 4
7 (DURATION).

8 ***END OF ORDER***

9 **ACKNOWLEDGED AND AGREED TO FORM:**

10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

11 /s/ Ori Katz

12 Ori Katz (California Bar No. 209561)

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22 *Attorneys for ICTSI Oregon, Inc.*

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Order that was issued by the United States Bankruptcy Court for the Northern District of California on _____ [date] in the case of *In re International Longshore and Warehouse Union*, Case No. 23-30662-HLB. I agree to comply with and to be bound by all the terms of this Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States Bankruptcy Court for the Northern District of California for the purpose of enforcing the terms of this Order, even if such enforcement proceedings occur after termination of this Action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

Court Service List

Registered ECF participants.

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